IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR
&
THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 22ND JANUARY 2007 / 2ND MAGHA 1928

R. C. Rev..No. 437 of 2006()

RCA.27/2005 of RENT CONTROL APPELLATE AUTHORITY, KOZHIKODE
RCP.71/2001 of RENT CONTROL COURT, KOZHIKODE-II
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REVISION PETITIONERS/RSPDTS.IN RCA/LRS OF RSPDT.

1. PREMAVALLI, W/O.SREEDHARAN,
RESIDING AT THOTTUNGAL HOUSE, BEYPORE IN
BEYPORE AMSOM AND DESOM OF KOZHIKODE TALUK.

2. SREEKALA, D/O. SREEDHARAN,
RESIDING AT PAYYANAKKAL HOUSE, PANNIYANKARA AMSOM,
DESOM OF KOZHIKODE TALUK.

3. JEEJA, D/O.SREEDHARAN,
RESIDING AT PATTANCHARI, KADALUNDI AMSOM AND DESOM
KOZHIKODE TALUK.

4. SREEJITH, S/O.SREEDHARAN,
RESIDING AT THOTTUNGAL HOUSE, BEYPORE AMSOM AND
DESOM, KOZHIKODE TALUK.

5. SREEJA, D/O. SREEDHARAN,
RESIDING AT KANGAYIL HOUSE, NALLALAM AMSOM,DESOM,
KOZHIKODE TALUK.

BY ADV. SRI.M.P.SREEKRISHNAN
SMT.SHAHNA KARTHIKEYAN

RESPONDENTS: APPELLANT IN RCA/PETITIONER IN RCP:

C.V. MOHAMMEDKOYA, S/O. KOYATTY,
RESIDING AT KOZHIKKODAN THAMARAMMAL VEEDU,
P.O. CHALIYAM IN KADALUNDI AMSOM AND
PAZHACHANNUR DESOM, KOZHIKODE TALUK,KOZHIKODE DIST

BY ADV. SRI.V.V.SURENDRAN
SRI.P.A.HARISH

THIS RENT CONTROL REVISION HAVING COME UP FOR ADMISSION ON 22/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.A. ABDUL GAFOOR & K.R. UDAYABHANU, JJ

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R.C.R. NO. 437 OF 2006

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Dated this the 22nd day of January 2007

ORDER

Udayabhanu,J

The revision petitioner is the tenant who has been ordered to vacate as per the order of the appellate authority that reversed the finding of the Rent Control Court which was in favour of the revision petitioner. The revision petitioner has stressed the fact that the divergent finding of the appellate authority is not justified on facts. It is his case that the petitioner is having possession of other rooms and to substantiating the above contention he produced assessment extracts from the local authority which is in the name of the mother of the landlord. Evidently, the petitioner is not the owner of the other premises which are said to be in possession of his mother. Hence the above contention has no force as such. The petitioner has only admitted that he owned a building at Mathottam which is admittedly 3 k.ms away from the petition schedule premises,

which is situated at Beypore. The appellate authority has rightly found that the tenant is not entitled to direct the landlord to run the hotel at Mathottam which is not situated in the same locality. So far as the contention that the petitioner's bonafide need to start hotel business in the premises the only ground raised against is that the petitioner/landlord is a real estate broker. But no objective or independent evidence was adduced to prove the above contention. The petitioner is aged 35 years and is married and having children. According to him, he has no other means of livelihood. The evidence adduced did not show that he has got any other ostensible sources of livelihood. So far as the protection of the second proviso to section 11(3) of Kerala Buildings (Lease and Rent Control) Act is concerned the evidence adduced by the revision petitioner consists of only his oral testimony as against the version of PW1. Hence the tenant has not succeeded in establishing the fact that he is entitled to the above statutory protection. In the circumstances, we find no ground to interfere in the findings of appellate authority.

2. Considering the plea of the counsel for the revision petitioner that he wanted time to shift the hotel business that he is running in the premises since 1962, we are granting six months time from today to vacate the premises on condition that he shall remit the entire arrears of rent if any and continue to remit rent due in future and file an affidavit before the execution court undertaking that he shall surrender vacant possession of the premises on or before 22.07.07.

In the result, the revision petition is dismissed in limine with the above directions.

K.A. ABDUL GAFOOR, JUDGE

K.R. UDAYABHANU, JUDGE.

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